IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

**No. 89**

AUTOMATIC CANTEEN COMPANY OF AMERICA,
*Petitioner,*

*vs.*

FEDERAL TRADE COMMISSION,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

## OBJECTION OF AUTOMATIC CANTEEN COMPANY OF AMERICA, PETITIONER, TO THE MOTION OF NATIONAL CANDY WHOLESALERS ASSOCIATION, INC., FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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Conformably to Rule 27—9(c) of the Court, Automatic Canteen Company of America, Petitioner herein, objects to the motion of National Candy Wholesalers Association, Inc. for leave to file brief as *amicus curiae* and respectfully submits as a compelling reason for withholding consent, that the movant has not brought itself within the requirement of said Rule 27—9(c) in that the movant has not set forth facts or questions of law that have not been, or rea-

sons for believing that they will not adequately be presented by the parties, or their relevancy to the disposition of the case.

Thus, as sole justification for appearing as *amicus curiae*, movant points to the case of *Burnet* v. *Houston* (1931), 283 U. S. 223, 51 S. Ct. 413. That was a case involving the burden upon a taxpayer of income tax to support deductions claimed by the taxpayer. Plainly, facts supporting such deductions were wholly within the control of the taxpayer. It is pointed out in the brief of Petitioner, objector here (see pages 44 and 45, and also pages 52 and 53 of that brief), as one of the reasons why Section 2(b) of the Robinson-Patman Act cannot apply to proceedings under Section 2(f) of that Act, that to apply it would be placing upon Petitioner the burden of producing facts which were not and are not within the control of the Petitioner. The case of *Burnet* v. *Houston* (283 U. S. 223, 51 S. Ct. 413), is not at all relevant to that issue and there is no other issue anywhere in this cause to which that case could be said to be relevant in any possible way. Movant's motion, therefore, fails to supply an essential element required by said Rule of this Court as a condition to consideration by this Court of its motion for leave to intervene as *amicus curiae*.

The sole issue in the cause relative to which movant could possibly intend to cite said case of *Burnet* v. *Houston* (283 U. S. 223, 51 S. Ct. 413) (as to which, as shown, that case is not at all relevant), has in fact been fully presented in the brief for Petitioner at pages 44 and 45, and pages 52 and 53 of that brief. Movant's motion, therefore, fails to comply with said Rule 27—9(c) for the further reason that it does not show reasons for believing that the point will not be adequately presented by the parties, for it thereby appears that it has in fact already been fully presented.

Petitioner respectfully submits to the Court that it is unthinkable that the attorneys for the Government will not

respond fully to the portions of Petitioner's brief (pages 44 and 45, and 52 and 53). And it is quite unnecessary and a useless accumulation of briefs to permit repetition by an *amicus curiae*.

Respectfully submitted,

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